

# New FMCSA Rule Would Permit Immediate Suspension of Broker/Freight Forwarder Authority

SEPTEMBER 28, 2018

Authors: [Jonathan R. Todd](#), [Kristopher J. Chandler](#)

The Federal Motor Carrier Safety Administration (“FMCSA”) issued an advance notice of proposed rulemaking (“ANPRM”) on Thursday, September 27, 2018, to address broker and freight forwarder financial responsibility requirements under the Moving Ahead for Progress in the 21st Century Act (“MAP-21”). 83 Fed. Reg. 48785. The ANPRM requests public comment on several key regulatory issues under consideration. Those issues include: (1) group surety bonds and trust funds; (2) assets readily available in a trust fund; (3) immediate suspension of operating authority; (4) surety or trust responsibilities in cases of broker or freight forwarder financial failure or insolvency; (5) enforcement authority over surety providers; (6) eligible BMC-85 trust funds; (7) BMC-84 and BMC-85 Form Revisions; and (8) financial responsibility requirements for brokers of household goods.

Each of the issues under consideration involved increased enforcement or enforcement mechanisms targeting the integrity and value of financial responsibility requirements. For example, the FMCSA would hold enforcement authority over sureties and trust funds including the ability to suspend the offering of those forms of financial responsibility to brokers or forwarders for a period of three years and to pursue civil penalties in federal court. The FMCSA also seeks comment on the household goods broker market including whether the financial responsibility requirements should differ in response to consumer protection concerns.

The proposed FMCSA enforcement action involving immediate suspension of broker or freight forwarder operating authority stands out among this field of important issues. The incidents that would permit such suspension include: (1) financial insolvency; (2) failure to maintain at least \$75,000 in financial responsibility; or (3) failure to respond after the surety or trust fund provider gives notice of a valid claim. In contrast, today brokers and freight forwarders may continue to operate for 30 days after a surety or trust fund provider notifies the FMCSA that it is cancelling the respective form of financial responsibility. Furthermore, the FMCSA is also seeking comments as to the definition of “financial failure” and “insolvency” relating to the FMCSA’s power to take this enforcement action.

Parties interested in submitting comments to the advanced notice are required to do so on or before November 26, 2018. Comments may be submitted through the mail or online through [regulations.gov](https://www.regulations.gov), in either case identifying Docket Number FMCSA-2016-0102.

The Benesch [Transportation & Logistics Practice Group](#) is available to assist in the drafting and submitting of comments. You may reach Jonathan Todd, Of Counsel, at 216-363-4658 or [jtodd@beneschlaw.com](mailto:jtodd@beneschlaw.com). You may also reach Kristopher Chandler, Associate, at 614-223-9377 or [kchandler@beneschlaw.com](mailto:kchandler@beneschlaw.com).